

SENATE BILL 2144

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 29,
Chapter 34 and Title 65, relative to enacting "The
Tennessee Land Injury Liability Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as "The Tennessee Land Injury Liability Act".

SECTION 2. The general assembly has recently learned of significant legal problems for Tennessee landowners which can suddenly and unexpectedly arise between landowners and any railroad when a train carrying hazardous cargo derails and hazardous material is thereby released onto lands not belonging to the railroad. In such cases there is almost always a great economic disparity between the individual landowner and the particular railroad involved. Most railroads operating in this state are multibillion dollar corporations headquartered in distant other states. When a derailment of a train carrying hazardous cargo occurs and hazardous material is thereby released onto the lands of a citizen of this state, the individual landowner is usually then at a great disadvantage in trying to obtain assurance to the landowner's personal satisfaction that a full recovery of all hazardous material which spilled onto the land has been achieved and that no such hazardous material waste remains thereon. Testing for such possible remaining hazardous material can cost hundreds of thousands of dollars, and if these tests prove positive the additional hazardous waste recovery costs can amount to hundreds of thousands of dollars more. Such costs are in addition to the other ordinary and usual costs of a train derailment cleanup. If a railroad refuses to incur such additional costs for testing and recovery and the landowner fears that hazardous material still remains on the landowner's land, the individual landowner may then have no practical recourse to a resolution of this dispute. Legal action initiated by a landowner relying upon traditional

negligence and/or other tort causes of action can take years to litigate, can require thousands of dollars to prepare for trial, and places the burden of proof upon the landowner plaintiff to first establish the full amount of the damages for which the plaintiff seeks recovery, something that a landowner acting under such legal theories will not be able to do without first incurring such hazardous material testing costs. A railroad thus has a great economic advantage in such circumstances to coerce a settlement of such a dispute upon its own terms, and such an outcome is usually not only adverse to the legitimate interests of an individual landowner, but is also adverse to the general interests of the people of the state of Tennessee in protecting and preserving the environmental quality of the lands of this state. Therefore, the general assembly has determined that the public policy of this state in the aforementioned circumstances shall be "to level the playing field" between the landowners of this state and the railroads which operate in this state when a derailment of a train carrying hazardous cargo occurs anywhere in this state and any hazardous cargo of the train is thereby released onto any lands not belonging to the railroad.

SECTION 3.

(a) Immediately following occurrence anywhere in this state of any derailment of any train, or any of its cargo, onto any lands not belonging to the railroad, the owner of such lands shall at the landowner's own risk have complete, continuous, and unimpeded access to the derailment site despite such derailment and the hazards attendant thereto. Any landowner accessing any such derailment site may photograph, video, or by any other method document or record the manner and extent of the train derailment, and the derailment of the train cargo, onto the landowner's land.

(b) No law enforcement officer or emergency response officer, nor any law enforcement agency or emergency response agency, of this state or any county or municipality of this state, shall deny access to any landowner who at such person's own

risk desires to enter upon that person's own lands to photograph, video, or by any other method document or record the manner and extent of a train derailment, and the derailment of the train cargo, thereon.

(c) A landowner may enforce this right to immediately enter upon such person's own lands at the person's own risk under the aforesaid circumstances by obtaining injunctive relief against any or all such officers or agencies that seek to prevent or prohibit that person's entry upon the lands. Such injunctive relief may be obtained by the owner of any such lands from any court of record for any county in which such lands are located.

SECTION 4. If a derailment of a train carrying hazardous cargo occurs anywhere in this state and any hazardous cargo of the train is thereby released onto any lands not belonging to the railroad, then the entire expense of all remedial and recovery action therefore, including:

(1) The costs of testing to determine the presence, and the continuing presence, of any such hazardous material; and

(2) All hazardous waste removal costs;

shall be the legal obligation of the carrying railroad and for which it shall be strictly liable to the landowner for all such costs without regard to the fault of the railroad.

SECTION 5.

(a)(1) In addition to the usual and ordinary compensatory damages allowed to a landowner for injury to and the loss in value of the landowner's real property, the measure of damages for injury to land from a release of hazardous material thereupon due to a train derailment shall also include:

(A) All expenses of inspection and testing of the land to determine the presence of any hazardous material which may remain thereon and the extent of injury to the land; and

(B) All hazardous waste removal costs.

(2) The carrying railroad whose train derailed shall be strictly liable to the landowner for all such expenses and costs without respect to its causation of any such damages.

(b) Any assignment of fault which a railroad may seek to comparatively make between it and any other person for any or all such damages shall not include the landowner.

SECTION 6. The measure of damages for injury to land upon a release of hazardous material thereupon due to a train derailment shall also include:

(1) All costs of inspection and testing to determine the existence and extent of injury to the land; and

(2) All costs of hazardous waste removal even though such costs may exceed the full fair market value of the land immediately prior to the derailment thereon.

SECTION 7. No inspection or testing to determine the existence and extent of injury to any land resulting upon a release of hazardous material thereupon due to a train derailment, or the removal of any hazardous waste from such land, shall be made by the carrying railroad without first obtaining the written approval of the landowner to do so.

SECTION 8. This act shall be construed liberally to accomplish the remedial purposes which this act is intended to effect.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.